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Summary of expected modifications to the United Nations Model Double Taxation Convention between Developed and Developing Countries and commentaries for the 2017 update: articles 23 and 26 and various changes related to consequential base erosion and profit shifting

Note by the Secretariat

The annexed table contains a summary of issues discussed by the Committee of Experts on International Cooperation in Tax Matters with respect to modifications to articles 23 and 26 and various consequential changes related to consequential base erosion and profit shifting of the United Nations Model Double Taxation Convention between Developed and Developing Countries. The table provides information about the work that has already been done and the work that is to be accomplished by the end of June 2017, when the membership of the Committee will change. The column entitled "Status at 14th Session of the Committee" is therefore intended to guide discussion and decision-making during the fourteenth session of the Committee.

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Annex

Summary of expected modifications to the United Nations Model Double Taxation Convention between Developed and Developing Countries and commentaries for the 2017 update: articles 23 and 26 and various changes related to consequential base erosion and profit shifting*

Topic	*9th Session of the Committee*	*10th Session of the Committee*	*11th Session of the Committee*	*12th Session of the Committee*	*13th Session of the Committee*	*Status at 14th Session of the Committee*
Art. 23 (methods for the elimination of double taxation): **1. Conflicts of qualification and conflicts of interpretation** **2. Subcommittee on Technical Services** **3. Base Erosion & Profit Shifting**	**1. Conflicts of qualification and conflicts of interpretation** The Committee requested Ms. Devillet and Ms. Saksena to work together to develop a paper for consideration at the tenth session of the Committee **2. Subcommittee on Technical Services** Not an agenda item. **3. Base Erosion & Profit Shifting** Not an agenda item.	**1. Conflicts of qualification and conflicts of interpretation** – Mr. Dawson presented a paper on articles 23 A and 23 B of the Model Convention and conflicts of qualification and interpretation (E/C.18/2014/CRP.10), which was prepared by Ms. Devillet pursuant to a request made at the 9th session of the Committee.	**1. Conflicts of qualification and conflicts of interpretation** – Article 23 A (4) minority view was on the agenda (the rest of the Article 23 A (4) aspects of the Model Update having been agreed at the 10th Session) but wording was not agreed. **2. Subcommittee on Technical Services** No consequential changes as a result of the work of the Subcommittee.	**1. Conflicts of qualification and conflicts of interpretation** – The Committee discussed the minority view on the inclusion of paragraph 23 A (4), but did not reach a final decision. Some Members indicated that they no longer sought expression of a minority view as they no longer considered it necessary. **2. Subcommittee on Technical Services** No consequential changes as a result of the work of the Subcommittee.	**1. Conflicts of qualification and conflicts of interpretation** – No detailed discussion of Article 23 (4) minority view. **2. Subcommittee on Technical Services** Some consequential changes as a result of the work of the Subcommittee. **3. Base Erosion & Profit Shifting** – Possible treaty revision was considered following the OECD's wording of article 23 (saving clause).	**1. Conflicts of qualification and conflicts of interpretation** – Already agreed: Incorporation into the commentary to article 23 of the United Nations Model Convention paragraphs 32.1 to 32.7 of the commentary on articles 23 A and 23 B of the OECD Model Convention and proposed additional comments to reflect the differences between the provisions of the two Model Conventions.

* The present annex is being issued without formal editing.

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		– the Committee agreed to incorporate into the commentary on article 23 of the United Nations Model Convention paragraphs 32.1 to 32.7 of the commentary on articles 23 A and 23 B of the OECD Model Convention and proposed additional comments to reflect the differences between the provisions of the two Model Conventions – The Committee agreed to include the proposed new paragraph 4 in article 23 A of the United Nations Model Convention, giving the State of residence the right not to exempt an item of income or of	**3. Base Erosion & Profit Shifting** No consequential changes as a result of the work of the Subcommittee.	**3. Base Erosion & Profit Shifting** No consequential changes as a result of the work of the Subcommittee.	Agreed in principle to include such a provision.	– Already agreed: Include the proposed new paragraph 4 (of the OECD Model) in Article 23 A of the United Nations Model Convention. – For decision: Request the dissenting Members, if any, to draft the minority view manifesting their disagreement with the inclusion of paragraph 4 in Article 23A of the Model, and decide on the final wording. **2. Subcommittee on Technical Services** – Deal with consequential modifications to Article 23 A (2), as a result of the introduction of the new Article 12 B.

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		capital where a divergence of interpretation of the treaty between the contracting States could lead to double non-taxation or to the imposition of low taxes on dividends, interest and royalties because of paragraph 2 of articles 10, 11 or 12. – The Committee agreed to reflect in the commentary a minority view stating that some Committee members did not agree with the inclusion of the new paragraph 4. **2. Subcommittee on Technical Services** No consequential changes as a result of the work of the Subcommittee.				**3. Base Erosion and Profit Shifting** – For decision: wording and placement of saving clause.

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		3. Base Erosion & Profit Shifting Not an agenda item.				
Art. 26 exchange of information	– The members of the Committee expressed support for further work on the issues raised during the presentations, and a subcommittee was set up to address those issues. – The subcommittee would be coordinated by Mr. Lara Yaffar and was mandated to: (a) monitor international developments in the area of the exchange of information (including OECD developments) and report to the 10th session with	The Committee agreed to the changes to the Model and commentary proposed by the Subcommittee on Exchange of information. As per paper (E/C.18/2014/CRP.4). – The changes mainly comprised: • Amendment of the text of article 26 (2) to expressly provide for the possibility of information sharing by tax authorities with other law enforcement agencies and judicial authorities under certain conditions.	The Committee agreed in principle that the Code should take the form of a Council resolution, with a draft to be included in the report of the Committee, in the section on action required by the Economic and Social Council The language of the text should be revised to produce a text that is not made to appear legally binding for countries, given that this would unnecessarily hinder the wide support for such a document. The Committee recommended that the	The Committee agreed to the proposed Code of Conduct as to content, with the form to be governed by ECOSOC requirements. Committee agreed that Member States may voluntarily express their commitment to the UN Code of Conduct, by expression of consent to the UN secretariat. The expression of consent is a completely voluntary action and does not create a binding obligation for the consenting Member State.	Not an agenda item.	Already agreed: Changes to Model and commentary as agreed at 10th session and Code as agreed at 12th session (in the form to appear in Report of 12th and 13th sessions.

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	recommendations on any further work; and (b) provide any further input required to amend article 26 and the commentary thereon for the next update of the United Nations Model Con\ention.	• Expansion of the commentary to clarify the interpretation of the standard of "foreseeable relevance" and to explicitly refer to the term "fishing expeditions" as an element within the determination of foreseeable relevance. • Clarifications in the commentary relating to the identification of the person believed to be in possession of requested information. E/2014/45 E/C.18/2014/6 14-66993 17/29 • Inclusion of optional language in the commentary for contracting States wishing	subcommittee redraft the text for the next meeting of the Committee.			

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		to improve the speed and timeliness of exchange of information under article 26. – The subcommittee on exchange of information introduced a paper on a proposed revised United Nations Code of Conduct on Cooperation in Combating International Tax Evasion (E/C.18/2014/CRP.5). – The Subcommittee on Exchange of Information considered it a good opportunity to update the Code in order to take on board those developments and to make a statement in support of automatic				

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		exchange of information. – The Committee agreed to discuss it at the 11th Session of the Committee.				
BEPS Subcommittee (several Articles)					– Other issues open for consideration by the Subcommittee are: – Amendment of preamble and title of the Convention; – Article 4 (3) – Text in consideration of the Limitation on Benefits (LOB) clause and/or the Principled Purpose Test (PPT): Agreed in principle to include 4 options: – A PPT alone – An LOB with a PPT – An LOB with a narrower	– This is an agenda item at the upcoming Session of the Committee. Topic is open for discussion by the Committee, although some items have been agreed in principle.

Paper	16th Session of the Committee	18th Session of the Committee	19th Session of the Committee	12th Session of the Committee	13th Session of the Committee	Status at 14th Session of the Committee
					conduits provision; and – **An LOB alone for countries with domestic law addressing conduits.** – **Article 10(2);** – **The Title and the Preamble of the Model;** – Changes were agreed to reflect the purpose of combatting tax abuse. – Article XX (new Anti-abuse article); – Ordering and numbering of provisions. – Commentaries relating to these Articles	